IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

WP(C).No. 29435 of 2006(D)

PETITIONER:

M/S.AMBAZHACHALIL AGENCIES,
MUVATTUPUZHA, ERANAKULAM DISTRICT,
REPRESENTED BY ITS PROPRIETOR,
P.K.VARGHESE.

BY ADV. SRI.P.V.BABY

RESPONDENTS:
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1. **THE EXECUTIVE CO-ORDINATOR,**
   KERALA TOTAL SANITATION AND HEALTH MISSION,
   TC 24/2054, LEKSHMI NIVAS, PANAVILA JUNCTION,
   THYCAUD P.O., THIRUVANANTHAPURAM.

2. **THE BLOCK DEVELOPMENT OFFICER,**
   OFFICE OF THE BLOCK DEVELOPMENT OFFICE,
   DEVIKULAM, IDUKKI DISTRICT.

3. **THE PRESIDENT, VATTAVADA GRAMA**
   PANCHAYAT, KOVILOOR P.O., IDUKKI DISTRICT.

BY GOVERNMENT PLEADER SMT. T.B.RAMANI
BY ADV. BABU JOSEPH KURUVATHAZA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.29435/2006 D

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE COMMUNICATION DTD. 28/11/2002 SENT BY THE 3RD RESPONDENT TO THE ASST.DEVELOPMENT COMMISSIONER, IDUKKI.**

EXT.P2: **COPY OF THE LETTER DTD. 25/02/2003 AND THE PROJECT REPORT APPROVED BY THE SECRETARY, BLOCK PANCHAYAT, DEVIKULAM.**

EXT.P3: **COPY OF REPRESENTATION DTD. 30/05/2003 SENT BY THE PETITIONER TO THE DISTRICT COLLECTOR, IDUKKI.**

EXT.P4: **COPY OF RECEIPT DTD. 15/02/2005 ISSUED BY THE KUDUMBA SREE UNIT OF THE 3RD RESPONDENT PANCHAYAT TO THE PETITIONER.**

EXT.P5: **COPY OF COMMUNICATION DTD. 15/02/2005 ISSUED BY THE KUDUMBA SREE UNIT OF THE 3RD RESPONDENT PANCHAYAT TO THE 2ND RESPONDENT.**

EXT.P6: **COPY OF COMMUNICATION DTD. 4/03/2005 ISSUED BY THE 3RD RESPONDENT PANCHAYAT TO THE PETITIONER.**

EXT.P7; **COPY OF REPRESENTATION DTD. 23/03/2005 SUBMITTED BY THE PETITIONER TO THE PROJECT OFFICER, D.R.D.A. IDUKKI.**

EXT.P8: **COPY OF COMMUNICATION DTD. 23/04/2005 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.**

EXT.P9; **COPY OF COMMUNICATION DTD. 18/05/2005 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) No. 29435 OF 2006

Dated this the 19th day of March, 2007

JUDGMENT

The petitioner says that he was appointed as convener of the committee for implementation of the total sanitations scheme in the 3rd respondent Grama Panchayat as per resolution No.(III) 6 dated 26.11.2002 of the Panchayat. Thousand toilets made by fiber and plastic were decided to be installed according to the requirements of the residents of the 3rd respondent Panchayat. The quotations submitted by the petitioner for Rs.2,500/- per toilet was approved by the Committee and Ext.P1 dated 28.11.2002 is a true copy of communication issued by the 3rd respondent to the Assistant Development Commissioner of Idukki with regard to the appointment of the petitioner. Ext.P2 is copy of the detailed project report dated 25.2.2003 prepared by the Secretary of the Block Panchayat. Out of the sum of Rs.2,500/- per toilet 500/- is to be paid either by the beneficiaries or by the Panchayat and Rs.2,000 is the Central Government grant. The petitioner installed 250 toilets in the 3rd respondent Panchayat and all of them were distributed to the beneficiaries through the Kudumbasree unit of the Panchayat. But he was not paid the amounts due for 250 toilets completed. He therefore submitted Ext.P3 representation dated 30.5.2003 to the District

Collector. By 15.2.2005 the petitioner completed and entrusted around 350 toilets to the Kudumbasree Unit of the 3rd respondent and Ext.P4 is a copy of the receipt issued by the Kudumbasree Unit on 15.2.2005. These toilets were distributed to the beneficiaries and the petitioner relies on Ext.P5 communication issued to the 2nd respondent by the Chair person of the 3rd respondent Panchayat. It is pointed out that in Ext.P5 there is a request by the Chairperson of the Unit to pay to the petitioner the amounts due from the beneficiaries. The petitioner submits on 4.3.2005 he installed 50 more toilets and relies on Ext.P6 communication dated 4.3.2005 issued by the 3rd respondent in that regard. (Actual number shown in the Ext.P6 is 20 and not 50.) Since the amounts were not received by the petitioner, the petitioner sent Ext.P7 letter to the Project Officer DRDA, Idukki for issuing necessary instruction to the 2nd respondent for disbursement of the amounts due to the petitioner. Ext.P7 dated 23 3.2005 is a copy of that letter. The petitioner submits that inspection team of the Kerala Total Sanitation and Health Mission inspected the fiber tanks and closets supplied and installed by the petitioner and found them to be technically feasible. The petitioner relies on Ext.P8 communication in this regard issued by the first respondent to the 2nd respondent. The petitioner submits that on 18.5.2005 he supplied 30 number more fibre tanks and closets to

the 3rd respondent and the same was accepted by the 3rd respondent and entrusted with the Kudumba Sree Unit. Ext.P9 communication dated 18.5.2005 issued by the 3rd respondent is relied on in this context. The petitioner submits that on 28.5.2005 the 3rd respondent intimated the 2nd respondent that 400 fiber tanks and closets for the installation for 400 houses in 3rd respondent Panchayt has been supplied by the petitioner and requested to make necessary payments to the petitioner at the rate of Rs.2,500/- per unit. The petitioner received an amount of Rs.1,55,000/- towards 66 number of toilets supplied and the balance amount remains unpaid. It was on no profit no loss basis that the petitioner had agreed for supplying the toilet materials. But the balance amount payable for 334 toilets actually supplied and installed remains unpaid. Making the above averments the petitioner has filed this writ petition praying for issuance of a writ of mandamus commanding respondents 1 and 2 to pay to the petitioner amounts at the rate of Rs.2,500/- per unit for 334 units of toilets made out of fibre tank and distributed to the 3rd respondent Panchayat under the supervision of Kudumba Sree unit. The petitioner also prays for a declaration that the respondents are liable to pay the amount

2. The 2nd respondent has filed a counter affidavit. It is contended that the 3rd respondent Panchayat had selected the petitioner as

Convenor for implementation of Model Sanitation Village Programme, being a backward village situated in Idukki District. The 2nd respondent-Block Development Officer is the implementing officer of the Programme. The project is intended to provide assistance for constructing sanitary latrines in the village for all houses which did not have a latrine. About 1,000 latrines have to be constructed in the village for achieving the target. A sum of Rs.2,000/- will be granted being assistance from the Government for the installation of a latrine unit. But the unit will cost Rs.2,500/-. Excess cost is to be met by the beneficiary as his contribution. The construction of latrines was entrusted with the beneficiaries themselves. The grant amount will be sanctioned by the BDO directly to the beneficiary by way of bank cheque against proper acknowledgment. The assistance will be sanctioned only on the basis of verification report obtained from the field level officers of the Block that the latrine has actually been installed.

3. As regards the petitioner it is contended that he is only a dealer who supplies sewing machines and other industrial items at Muvattupuzha. He is not a resident of Vattavada Grama Panchayat. Though he claims to be the Convenor of the beneficiary committee, his being Convenor will be against the prevailing rules for constitution of beneficiary committee. On coming to know that a large number of

latrines are to be constructed in Vattavada, he himself approached the Panchayat and submitted a project for supplying fiber made latrines costing Rs.2,500/-. The Panchayat authorities might have approved the Project. But the implementing officer-the 2nd respondent, has never appointed the petitioner as the Convenor of the Beneficiary Committee or executed any agreement with the petitioner other than Ext.P2(2) project report which was forwarded to the District Panchayat for consideration. Therefore the 2nd respondent has no liability to pay any amounts which the petitioner allege that he incurred on account of the scheme. The Panchayat authorities might have made some arrangements with the petitioner for supply of 'fiber-made' latrine units. Later the 1st respondent also intimated that 'fibre-model' latrines supplied by the petitioner were also feasible and can be used for the implementation of the scheme. 222 families have so far constructed their latrines under the scheme in which 66 were made of 'fibre-tank' and closets supplied by the petitioner. On the basis of the communication received from the 1st respondent, that the fibre tank latrines are also feasible in the scheme, the 2nd respondent has made payments to the beneficiaries for 66 latrines installed with the materials supplied by the petitioner. As the implementing officer, the 2nd respondent has to strictly follow the guidelines of the scheme, which are

stipulated in the implementation. An amount of Rs.2,000/- per latrine can be sanctioned only to those who have actually installed the latrines. Hence, the claim for sanctioning funds for additional 334 latrines which were not actually installed cannot be granted. The Government assistance can only be sanctioned for installed latrines. But the petitioner claims payment for supply of materials. Such a claim cannot be entertained by the 2nd respondent. In the last paragraph (para 6) of the counter, it is stated as follows:

"No Panchayat share being the beneficiary contribution has been deposited with the 2nd respondent. Only Government grant is available and sanctioned for the scheme is with the 2nd respondent. Hence claim for any additional amount other than Rs.2,000/- per latrine can not be granted."

4. To the above counter affidavit, the petitioner has filed a reply affidavit. It is pointed out that the counter affidavit has admitted that the project report submitted by the 2nd respondent in which the name of the petitioner mentioned as the Convenor has been approved. The records produced along with the Writ Petition will clearly establish that 400 latrines were installed by the petitioner. As and when funds are disbursed by the 2nd respondent, contribution of the beneficiaries will be released by the Panchayat. Implementation of the scheme was under the Grama Panchayat authorities as well as the Kudumbasree Units.

The 1st respondent has admitted in Ext.P8 that the tank and closet supplied and installed by the petitioner have been inspected by a team from the Kerala Total Sanitation and Health Mission and found to be technically feasible. Ext.P8 was issued by the 1st respondent directing the 2nd respondent to complete the project and to refund the entire balance if any after making payment to the petitioner. From the various documents placed on record it will be clear that 400 latrines were completed under the supervision of the Grama Panchayat as well as Kudumba Sree unit of the Panchayat. There cannot be any dispute regarding the supply and installation of 400 latrines. The beneficiary contribution will be sanctioned by the Panchayat. Admittedly Government grant of Rs.2,000/- per latrine is yet to be disbursed by the 2nd respondent for the completed latrines. The 2nd respondent, having admitted in Ext.P1 that the petitioner is the convenor of the beneficiary committee, is not entitled to contend that the petitioner's appointment as convenor is in violation of the prevailing rules. The project report has been approved by the Secretary of the Block Panchayat, Devikulam.

5. I have heard the submissions of Sri.P.V. Baby, counsel for the petitioner and those of Smt.T.B. Ramani, learned Government Pleader who appeared for respondents 1 & 2 and those of Sri.Babu Jose Kuruvathazha, counsel for the 3rd respondent-Panchayat. Sri.Babu

would submit that as far as the Panchayat is concerned, there is an agreement that Rs.500/- per each unit will be paid and that the payment cannot be made directly to the petitioner. Payment can only be made to the Kudumbasree units and it is open to the petitioner to claim the amounts from the Kudumbasree units once they receive payment.

6. Mr.P.V.Baby would submit by referring to the pleadings and documents Exts.P2, P4, P5, P6 and P9 that the stand presently taken by the 2nd respondent in the counter affidavit is highly unreasonable. According to him it was clear from the records produced that 400 units of fiber made tanks and closets have been supplied and installed by the petitioner. The project report Ext.P2 has been approved by the 2nd respondent also and Ext.P2 contains the name of the petitioner as the person to be appointed as Convenor for implementation of the project in the various colonies in the 3rd respondent Panchayat.

7. Smt.Ramani, Government Pleader, however, would refute the submissions of Mr.Baby. According to her, only 66 fiber tanks and closets supplied by the petitioner have been installed in the Panchayat and for those 66 fiber tanks and closets the petitioner has been paid remuneration at the rate of Rs.2,000/-. According to her the claim for the additional numbers of 334 cannot be entertained since so many toilets were not actually installed. She further submitted that under the

relevant rules, Convenor of the Panchayat Committee has to be appointed by the 2nd respondent. In the instant case the 2nd respondent has not appointed the petitioner as Convenor of the beneficiary committee. No agreement whatsoever has been executed with the petitioner. Ext.P2 project report of course is there and the same was forwarded to the District Collector. Petitioner is not qualified as Convenor of the beneficial committee under the existing rules. She also submitted that the 2nd respondent cannot be compelled to pay the beneficiaries share to the petitioner at all.

8. Having considered the rival submissions made at the Bar, I am of the view that if as a matter of fact 400 latrines with fiber made tanks and closets have actually been supplied by the petitioner and installed within the area of the 3rd respondent-Panchayat in implementation of Ext.P2 project report, the 2nd respondent will not be justified on technical reasons to deny payment to the petitioner. The 1st respondent has not filed any counter affidavit. Ext.P8 report will show that a team from the Kerala Total Sanitation and Health Mission inspected the fiber tanks and closets supplied and installed by the petitioner and found them to be technically feasible. But the total number of fiber tanks and closets supplied by the petitioner and actually installed in the 1st respondent – Panchayat is not mentioned in Ext.P8. Ext.P4 issued by the

Kudumbasree unit of the 3rd respondent-Panchayat who had over seen the actual installation work since the beneficiaries were its members and Exts.P6 and P9 will show that the petitioner's claim that he had actually supplied materials for 400 toilets and is more or less correct. But the question is whether they were actually installed and whether the beneficiaries are presently enjoying the toilets. The Panchayat has not filed any counter affidavit, denying the claim of the petitioner. Under these circumstances, I am of the view that notwithstanding the technicalities of matter, the 2nd respondent has to release payment for the unit actually installed with materials supplied by the petitioners less 66 for which payment is admittedly made at the rate of Rs.2,000 per unit. The Writ Petition will stand disposed of with the following directions:

The 1st respondent will within one month of receiving a copy of this judgment forward a report to the 2nd respondent after conducting a fresh inspection or otherwise as to whether the claim of the petitioner that a total number of 400 fiber tanks and closets have been supplied by him in the area of the 3rd respondent-Panchayat and that toilets have been installed using the supplied materials is correct. The 1st respondent will seek remarks from the 3rd respondent before forwarding the report to the 2nd respondent. The 2nd respondent will on the basis of

the said report release payment at the rate of Rs.2,000/- per unit to the petitioner, for such number of units, for which payments remain to be made.

The 3rd respondent is directed to pay at the rate of Rs.500 per unit to the kudumbasree unit in question within two months of receiving copy of this judgment and the petitioner will thereafter be entitled to claim those amounts from the Kudumbasree units. Parties will bear their respective costs.

PIUS C. KURIAKOSE, JUDGE

dpk/btt